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2010 FEB 24 PM 1:22

February 24, 2010

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BY HAND

Ms. Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
2010 FEB 24 PM 2:08
OFFICE OF GENERAL
COUNSEL

Re: MUR 6054 (Express Freight of Florida, LLC; MTampa Financing
Company, LLC; Timothy Mobley)

Dear Ms. Duncan:

This office represents Express Freight of Florida, LLC; MTampa Financing Company, LLC; and Timothy Mobley in the above-captioned MUR. This letter responds to the January 19, 2010, letters (the "Letters") received by our clients from the Federal Election Commission (the "FEC" or "Commission") stating that our clients may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with political contributions made by Terry Keith Howell.

The Letters refer to \$8,500 contributed by Mr. Howell to the campaign committee of Congressman Vern Buchanan as well as other unidentified possible contributions. The Letters conclude that the contributions may have been made by our clients, and not Mr. Howell, and that our clients may have assisted Mr. Howell in making contributions in the name of another in violation of the Act.

For the reasons stated below, the Commission should find no reason to believe that Express Freight of Florida, LLC, MTampa Financing Company, LLC, or Timothy Mobley violated the Act as a result of the Mr. Howell's political contributions.

PROCEDURAL STATUS

On January 28, this office entered an appearance on behalf of our clients and filed a request for an extension of 20 days to conduct the extensive fact-gathering exhibited in the substance of this response. Without explanation, we were informed on February 2 that our request for 20 days was denied and a 7 day extension was granted. The 7 day extension would have resulted in a due date during a week in which the federal government and this office were almost entirely closed due to inclement weather. On February 3, this office sought reconsideration of the 20 day

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extension request to complete the necessary fact-gathering. To date, there has been no reply to that request.

In addition, the Letters received by our clients suggest that they may have violated the Act in connection with certain unidentified contributions. The Letters do not specify the recipients or amounts of these contributions leaving our clients to guess at exactly what the FEC may be accusing them of doing. The procedural protections included in the Commission's recently adopted Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 Fed. Reg. 38617 (Aug. 4, 2009), should have required the FEC to provide adequate notice to our clients of all the facts that may constitute a violation of the Act. Accordingly, we respectfully request an opportunity to respond to any such facts if they form the basis for further Commission proceedings against our clients.

FACTS

1. Background

Mr. Howell had owned and operated a trucking company called Florida Express Freight, LLC that specialized in freight transportation. In 2007, Mr. Howell approached Mr. Mobley to seek a financial investment in the company. The discussions between the two men resulted in an initial 20% investment. Mr. Howell, however, wanted to attract additional investment to his trucking business. As a result, Express Freight of Florida, LLC ("EFF") was subsequently formed as a Florida limited liability company.¹ EFF's initial members included Mr. Howell who owned a 59% share of the company and was the chief executive officer of the company earning an annualized salary of \$54,000, MTampa, LLC which owned a 40% share of the company, and the Hohl Family Limited Partnership which owned a 10% share of the company.

MTampa, LLC² also owns 100% of MTampa Financing Company, LLC ("MTampa"). MTampa is a factoring company. Factoring is a financial service whereby a company sells its accounts receivable to a factoring company in

¹ EFF is treated as a partnership for federal income tax purposes.

² MTampa, LLC is wholly owned by another limited liability company that is owned by trusts controlled by Mr. Mobley.

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exchange for cash. The factoring company is responsible for the collection of the accounts receivable. The factoring company generates profit by purchasing the accounts receivable at amounts less than the full amount due to be collected or by charging a commission.

Mr. Mobley's decision to invest in EFF was driven by his belief that MTampa could earn significant returns on the factoring of EFF's accounts receivable. Though Mr. Mobley assumed that the investment in EFF would also provide returns, the primary purpose of the investment was to support MTampa's factoring business.

2. Financial Arrangements Between MTampa, EFF, and Mr. Howell

Once EFF was formed, it entered into a factoring agreement with MTampa. EFF would provide MTampa with copies of invoices for its accounts receivable. As EFF needed cash, EFF requested it from MTampa. MTampa would provide cash as long as MTampa had, or expected to have, sufficient accounts receivable from EFF to cover the requested amounts.

Mr. Howell would routinely request income distributions from EFF to pay for living and other personal expenses. Based on the apparent strength of EFF's business at the time, Mr. Howell was entitled to the distributions as a 50% owner of the company. MTampa would factor EFF's accounts receivable to provide EFF with cash to pay distributions to Mr. Howell. All of these distributions for personal expenses were treated as income to Mr. Howell.

Attached as Exhibit A is a copy of EFF's Form 1065 federal income tax return for 2008,³ the accompanying Schedule K-1 for Mr. Howell, and the worksheet used to calculate the distributions to Mr. Howell that were treated as income to him on the aforementioned documents. Line 19a on page 4 of the Form 1065 indicates that EFF made distributions of \$77,070 in 2008 as does line 6a of Schedule M-2 of page 5 of the Form 1065. Line 19a of the Schedule K-1 indicates that these distributions were attributed to Mr. Howell as income. The worksheet contained in the final two pages of Exhibit A details the amounts that made up the \$77,070 in income distributions to Mr. Howell. This amount was in addition to Mr. Howell's \$54,000 annualized salary.

³ Accounting records indicate that EFF's Form 1065 was sent to the Internal Revenue Service on September 15, 2009.

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The sixth column of the worksheet includes descriptions of each of the distributions, the vast majority of which describe personal expenses, e.g., "Contractor - Keith's house," "Wire for personal attorney fees," "Dr. bll, Hume Depot, Penneys," "Schloman Plumbing, Target, meals," "personal bills," and "personal expenses." These descriptions came from expense reports, oral communications, or other documents that accompanied the distribution requests and distributions themselves. EFF required the descriptions so that it could properly determine whether the expenses should be coded as business expenses to be incurred by EFF or as personal expenses to be treated as distribution income to Mr. Howell. At the end of the worksheet, the personal expenses and business expenses incurred by Mr. Howell are reconciled to show that \$77,070 of the total amount requested and provided to Mr. Howell was for personal purposes and, therefore, was treated as income to him on EFF's Form 1065 and the Schedule K-1 for Mr. Howell.

3. Ms. Howell's Political Contributions

The worksheet at Exhibit A shows that a distribution of \$8,800 on 3/28/2008 for a "Political Contribution" and \$10,000 on 9/04/2008 for "Reimburse - contr." were included within the \$77,070 amount distributed as income to Mr. Howell. As just explained, these descriptions ensured that EFF's accountant could code the amounts as personal expenses and treat them as distribution income to Mr. Howell. It appears that Mr. Howell made these contributions to Vern Buchanan for Congress and the Republican Party of Florida, though the latter was apparently returned for insufficient funds.

Mr. Mobley is personally acquainted with Congressman Buchanan and is an active volunteer fundraiser for Vern Buchanan for Congress. Mr. Mobley routinely solicits personal political contributions on behalf of Vern Buchanan for Congress from family and friends. In March, 2008, Mr. Mobley asked Mr. Howell if he would consider making a personal contribution to Vern Buchanan for Congress. Mr. Mobley believed that Mr. Howell was making enough money to make the contribution based on the apparent strength of EFF's business and the salary and distribution income Mr. Howell was drawing as a 50% owner of the company.

Mr. Mobley also solicited contributions on behalf of the Florida Republican Party. He does not, however, have a specific recollection of soliciting Mr. Howell for such a contribution.

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Contrary to press accounts discussed below, Mr. Mobley did not pressure Mr. Howell into making any of his political contributions. Mr. Mobley believed that Mr. Howell had the means to make a contribution to Vern Buchanan for Congress and thought Mr. Howell would be interested in supporting the reelection of their local Congressman. Mr. Mobley was not at the time aware of Mr. Howell's political affiliations, political contribution history, or any other relevant personal financial information other than the amounts Mr. Howell was paid as salary and drawing as distribution income from EFF. As just explained, Mr. Mobley does not recall whether he solicited Mr. Howell to contribute to the Florida Republican Party.

4. Fraud Committed by Mr. Howell

In the summer of 2008, Mr. Mobley and MTampa grew suspicious when the accounts receivable invoices that EFF was submitting to MTampa for factoring were paying very slowly. By the fall of 2008, Mr. Mobley and MTampa were able to determine that Mr. Howell was defrauding MTampa in two ways. First, Mr. Howell was submitting false accounts receivable invoices on behalf of EFF to be factored by MTampa. Second, Mr. Howell had engaged a second factoring company – Bibby Financial Services (“Bibby”) – on behalf of EFF and was submitting the same accounts receivable invoices to be factored by both Bibby and MTampa.

Attached as Exhibit B are deposition transcripts of two EFF employees, Sonja Bynum and Teresa Barnes. Both Ms. Bynum and Ms. Barnes provided detailed testimony of these frauds. See, e.g., Bynum Dep. 24:18-23; 33:14-21, 43, Nov. 19, 2008 (“Q All right. Let me show you what we’ll call Exhibit 4. It is Invoice Number 3947 dated 9/23/2008, billed to Sam’s Club Warehouse, in the amount of \$1,869.45. To the best of your knowledge, would that Exhibit 4 be a fictional invoice? A Yes, sir. Absolutely.”), (“Q So starting roughly sometime in August of this year, to the best of your knowledge, loads were being double-invoiced with one showing Bibby Financial Services, Inc., and one showing M-Tampa Financing Company, LLC; is that correct? A That’s right. That’s what we suspected at the time, and now I can look at the stuff and tell for sure that is exactly what was happening.”); Barnes Dep. 31:20-24, Nov. 19, 2008 (“Q And [Mr. Howell] was basically yelling because he was trying to get money in faster and faster? A Yes, sir. Q On fake invoices or double invoices? A Exactly.”)

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Attached as Exhibit C is a copy of a police report filed by MTampa to report Mr. Howell's fraudulent activity. It states that "Terry Keith Howell had:

1. Submitted fraudulent invoices in excess of \$1,000,000 to M Tampa Financing to be factored
2. M Tampa Financing did factor these invoices.
3. Faxed a letter from M Tampa Financing, in which he had no ownership or operating rights, using a forged signature, stating that no payments should be made to M Tampa Financing."⁴

Exhibit C includes copies of the forged letters which were also included in the police report. The police determined that they could not proceed against Mr. Howell absent a forensic accounting of the fraud by MTampa. However, MTampa could not provide such an accounting because its records were based on the fraudulent ones Mr. Howell had submitted. If accurate records existed and could be used to provide a true accounting, they were in Mr. Howell's possession and he was not cooperating.

In addition to defrauding MTampa, Mr. Howell was also trying to transfer EFF's principal assets, i.e., its trucks, as well as factored payments owed to EFF to Mr. Howell's Florida Express Freight, LLC trucking company without the knowledge or acquiescence of the other members of EFF.

5. Legal Action Against Mr. Howell

To reassert control over EFF and to recover its assets, the other members of EFF filed a civil suit against Mr. Howell. However, EFF and its members were also facing legal claims for wages and payments from EFF's truck drivers and other sources as a result of Mr. Howell's malfeasance. EFF's other members needed to obtain EFF's records to not only develop an accurate financial accounting for their own purposes, but to address these other claims too.

By this time, the other members of EFF had learned that Mr. Howell had an extensive history of engaging in activities that resulted in legal claims against him

⁴ This refers to the second fraud committed by Mr. Howell, i.e., the double-factoring previously discussed. To ensure that Bibby could collect on the accounts receivable invoices that Mr. Howell submitted for factoring to both Bibby and MTampa, Mr. Howell needed to extinguish MTampa's claims to the accounts receivable.

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and entities he controlled. Exhibit D contains a non-exhaustive list of these civil actions. This long record suggested that the deterrent and coercive effect of formal legal proceedings were going to have little effect on Mr. Howell. Accordingly, the other members of EFF decided that negotiating toward a possible settlement with Mr. Howell would be the best way for them to conclusively resolve all of the issues now facing EFF. The parties were able to agree on a settlement December 16, 2008.

Not long after signing the settlement agreement, Mr. Howell again became uncooperative. He was apparently facing personal tax, foreclosure and other financial and legal problems and needed additional financial help to resolve these problems. Mr. Howell had learned that Congressman Buchanan's business and political fundraising practices had been scrutinized and challenged in lawsuits spearheaded by an individual named Duane Martin Overholt. To exact funds from the other members of EFF, Mr. Howell claimed he discussed his political giving with Mr. Overholt (or his representatives) and the press. Mr. Howell falsely claimed that his contribution to Vern Buchanan for Congress was coerced and was not made with his own money. He threatened to continue to make these claims unless he received additional financial assistance from the other members of EFF.

In an attempt to end this matter once and for all, and to fully regain control of EFF's records and assets, the parties entered into a second settlement on February 6, 2009. That settlement embodied some of the provisions of the first settlement that Mr. Howell had failed to honor. It also barred Mr. Howell from attempting to further extort any more financial assistance by prohibiting him from making any more false statements about his contribution to Vern Buchanan for Congress. To ensure that he would honor this commitment, Mr. Howell signed a statement describing the circumstances surrounding the contribution. That statement was incorporated as "Exhibit 'B'" to the second settlement and is attached hereto as Exhibit F. It states:

I made a campaign contribution in the amount of \$8500.00 to Vernon Buchanan for congress. I withdrew these funds from Express Freight of Florida a company that I own 50% of and deposited them into my personal account. I then wrote the campaign check. It was my intention to do this lawfully and willingly.

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/s/ Terry Keith Howell

However, Mr. Howell subsequently perjured himself as he described the circumstances surrounding both his Vern Buchanan for Congress and Republican Party of Florida contributions. In deposition testimony in an unrelated matter, Mr. Howell falsely testified that he did not sign the statement attached as Exhibit E and that the contributions to Vern Buchanan for Congress were not made willingly. See Susan Taylor Martin, *Hard Times, Large Checks: Bankrupt Democrat Says He Was Pressured To Contribute to GOP Rep. Vern Buchanan*, St. Petersburg Times (June 20, 2009); Susan Taylor Martin, *Burglary Adds Twist To '08 Campaign: Stolen Records Show Illegal Donations To Rep. Buchanan, Man Says*, St. Petersburg Times (Aug. 19, 2009). Mr. Howell also falsely testified that a contribution by him to the Republican Party of Florida was similarly coerced and not made from his own funds. *Id.*

THE ACT AND IMPLEMENTING REGULATIONS

The Act states: "No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f.

The implementing regulations further state that it is impermissible for any person to: "Knowingly help or assist any person in making a contribution in the name of another." 11 C.F.R. § 110.4.

DISCUSSION

Mr. Howell's political contributions to Vern Buchanan for Congress and the Republican Party of Florida were made by him willingly with his own funds. Mr. Howell's statements in the media and to others to the contrary are false and not credible.

1. Mr. Howell's Political Contributions Were Voluntarily Made With His Personal Income.

Mr. Howell's political contributions, like many of his other personal expenses, were paid from income derived from his share of EFF distributions. EFF's federal income tax return and accompanying worksheet at Exhibit A unequivocally confirm

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this fact. They show that the funds used by Mr. Howell to make his political contributions were from his income. Accordingly, the contributions were not contributions by EFF or MTampa impermissibly made in Mr. Howell's name.

Mr. Howell has alleged in the press that his interest in the money he contributed was somehow diluted because the other members of EFF were "bullies" who "prosecuted" him in connection with the political contributions. *See Martin, Burglary Adds Twist To '08 Campaign*. First, for the reasons just provided, the money Mr. Howell contributed was income to him both as a factual and legal matter. Second, Mr. Mobley denies exerting improper pressure on anyone, including Mr. Howell, to contribute to Vern Buchanan for Congress or any other political committee. Mr. Howell's public allegation to the contrary is unsupported by facts.

Mr. Mobley summed up the situation aptly in the press: "[Mr. Howell] was able to take distributions as an owner and it was his decision as to what he did with any such distributions I am a constituent of, and do support, Congressman Vern Buchanan, and certainly asked Mr. Howell to consider donating to his campaign." *Id.* Mr. Howell did so voluntarily as his signed statement at Exhibit E confirms.

2. Mr. Howell's Assertions Are Not Credible.

Mr. Howell has made contradictory and false statements about his political contributions. The reasons for his lying are clear. He was facing dire personal financial and legal problems and sought financial assistance to cope with them. He apparently believed he could exact such assistance from his former business partners by falsely accusing them of committing campaign finance violations. Mr. Howell attempted to support his false version of the facts by stating in the press: "With all my issues ... how's a guy in bankruptcy going to be doing this?" *Id.* (internal quotations omitted). The answer is that he apparently believed that lying about the political contributions would give him the leverage he needed to extort more money to allay his personal debts.⁵

⁵ Furthermore, the documents that Mr. Howell claims to have provided the author of the two above-cited St. Petersburg Times articles do not support Mr. Howell's false version of the facts. The documents apparently show that money for Mr. Howell's political contributions was requested from EFF and MTampa and deposited into Mr. Howell's bank account. As previously discussed, these documents are entirely consistent with all the other documents generated when Mr. Howell requested distributions of income for his personal expenses.

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Mr. Howell has falsely testified under oath that he refused to sign the statement attached hereto as Exhibit E. *See Martin, Hard Times, Large Checks.* Exhibit E shows that the statement was signed and that Mr. Howell acknowledged that he willingly contributed to Vern Buchanan for Congress from his personal funds.

He also falsely testified about the circumstances surrounding the aftermath of this contribution. "Howell said in his deposition 'people from D.C.' flew to Tampa and told him they would pay for attorney Barry Cohen, a major Democratic Party fundraiser, to represent him." *Id.* "Howell said he was contacted by a 'lady from Washington' - he later identified her as House Speaker Nancy Pelosi," *Id.* "A spokesman for Pelosi said no one from her office or the Democratic Congressional Campaign Committee 'has spoken to this guy,' referring to Howell." *Id.*

Mr. Howell's history of deceitful behavior further undermines his credibility in this matter. The deposition testimony of Ma. Bynun and Ms. Barnes attached as Exhibit B makes this point stunningly clear:

Q Okay. So [Mr. Howell and his assistant Angel Acey-Peel] ask you to sign somebody's name on an original bill of lading as if it were an original signature?

A Exactly.

Bynun Dep. 43:9-12.

A ... And I even, just from past experience with him I have seen him do, you know, quite a bit of crooked things here and there."

Bynun Dep. 44:16-18.

Q What types of problems did he have that you knew about?

A Basically the same type of stuff that's being involved with right now. You know, of sending false documentation to different factoring companies.... [W]ith Ameri-Factors, Com-Data, those are two other

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factoring companies that put liens on his houses and filed bankruptcy because of him several times.

Bynun Dep. 45:9-14, 45:25-46:3. Exhibit D shows that "Comdata Network" had filed a "Contract & Indebtedness" claim and "Amerifactors Financial" had filed a "Breach of Contract" claim against Mr. Howell.

A ... And then I was just really overwhelmed with all the deceitfulness, the lying, the -- just everything about the company was just bad news. I would go home crying practically every night, from [Mr. Howell] yelling at me.

Barnes Dep. 31:15-19.

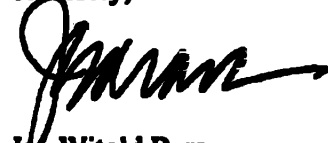
As aptly summed up again by Mr. Mobley in the press: "Mr. Howell is, I believe, a desperate man, and is, in keeping with past practices, trying to shift blame for his actions." See Martin, *Burglary Adds Twist To '08 Campaign*.

CONCLUSION

Mr. Howell made voluntary personal contributions from personal funds which constituted taxable income to him as reported to the Internal Revenue Service. He has made false and unsubstantiated accusations including statements made under oath which are demonstrably false. The Commission should not allow Mr. Howell to unfairly and unjustifiably use the FEC to further victimize our clients.

For the foregoing reasons, the Commission should find no reason to believe that EFF, MTampa, or Mr. Mobley violated the Act by making contributions in the name of another or by facilitating the making of such contributions.

Sincerely,



Jan Witold Baran
Caleb P. Burns

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cc: Chairman Matthew S. Petersen
Vice-Chair Cynthia L. Bauerly
Commissioner Caroline C. Hunter
Commissioner Ellen L. Weintraub
Commissioner Donald F. McGahn II
Commissioner Steven T. Walther
Ms. Ann Marie Terzaken
Mr. Jack Gould
Mr. Michael Columbo

Attachments

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